

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

JOSHUA SPRIESTERSBACH,

Plaintiff,

vs.

STATE OF HAWAII, CITY AND
COUNTY OF HONOLULU, OFFICER
ABRAHAM K. BRUHN, DEPARTMENT OF
PUBLIC SAFETY, OFFICE OF THE
PUBLIC DEFENDER, NIETZSCHE LYNN
TOLAN, MICHELLE MURAOKA, LESLIE
MALOIAN, JACQUELINE ESSER, JASON
BAKER, MERLINDA GARMA, SETH
PATEK, DR. JOHN COMPTON, DR.
MELISSA VARGO, DR. SHARON TISZA,
HAWAII STATE HOSPITAL, DR.
ALLISON GARRETT, JOHN/JANE DOES
1-20,

Defendants.

CIV. NO. 21-00456 LEK-RT

**ORDER DENYING PLAINTIFF'S OBJECTIONS TO MAGISTRATE
ORDER DATED 09.28.23 WHICH DENIES PLAINTIFF OPPORTUNITY
TO AMEND COMPLAINT AND AFFIRMING THE MAGISTRATE JUDGE'S ORDER**

In a September 28, 2023 entering order ("9/28/23 EO"), the magistrate judge ruled that the deadline to add parties and amend pleadings had expired, except for the October 10, 2023 deadline to file an amended complaint against Defendant City and County of Honolulu ("the City"). [Dkt. no. 246.] Before the Court is Plaintiff Joshua Spriestersbach's ("Spriestersbach" or "Plaintiff") objections to the 9/28 EO ("Objections"), filed on October 11, 2023. [Dkt. no. 248.] On October 18, 2023, the

City and Defendant Dr. Allison Garrett ("Dr. Garrett") filed their respective responses to the Objections. [Dkt. nos. 249, 251.] The Court has considered the Objections as a non-hearing matter pursuant to Rule LR7.1(d) of the Local Rules of Practice for the United States District Court for the District of Hawaii ("Local Rules"). Spriestersbach's Objections are hereby denied and the 9/28/23 EO is hereby affirmed for the reasons set forth below.

BACKGROUND

Spriestersbach initiated this action on November 21, 2021. See Complaint, filed 11/21/21 (dkt. no. 1). On August 18, 2022, this Court issued an order that, *inter alia*, granted in part and denied in part the City's Motion for Judgment on the Pleadings ("8/18/22 Order"). [Dkt. no. 151.¹] Judgment on the pleadings was granted in favor of the City as to all of Spriestersbach's claims against it, but he was granted leave to amend those claims. 8/18/22 Order, 622 F. Supp. 3d at 971. Spriestersbach was instructed to file his amended complaint by September 16, 2022, and this Court expressly stated that "leave to amend is limited to adding further allegations to support the claims that Spriestersbach asserted against the City

¹ The 8/18/22 Order is also available at 622 F. Supp. 3d 948.

in the Complaint, and Spriestersbach does not have leave to add new claims against the City.” Id.

During a September 13, 2022 status conference, the magistrate judge directed the parties’ counsel to meet and confer regarding issues related to the question of Spriestersbach’s competency to prosecute this case. In light of this and other issues, the magistrate judge extended the September 16, 2022 deadline in the 8/18/22 Order to October 17, 2022. See Minutes, filed 9/13/22 (dkt. no. 164), at PageID.1418.

On October 13, 2022, this Court approved the parties’ stipulation to hold the deadline for the filing of Spriestersbach’s amended claims against the City in abeyance pending the resolution of the issue of whether a guardian should be appointed to litigate this case on Spriestersbach’s behalf. [Stipulation to Extend Deadline to File First Amended Complaint and Order, filed 10/13/22 (dkt. no. 177) (“10/13/22 Stipulated Order”).] The 10/13/22 Stipulated Order stated that Spriestersbach “shall have up to fourteen (14) calendar days following entry of a court order finally determining Plaintiff’s prospective motion to substitute a guardian on behalf of Plaintiff Joshua Spriestersbach, to file an amended complaint against the City & County of Honolulu.” [Id. at 2.] The 10/13/22 Stipulated Order acknowledged that it was signed by

"[a]ll remaining parties who have appeared in this action."

[Id.] As of that time, the general deadline to add parties and amend pleadings was November 29, 2022. See Rule 16 Scheduling Order, filed 6/23/22 (dkt. no. 144) ("6/23/22 Scheduling Order"), at ¶ 2.

During a November 14, 2022 telephone conference, the magistrate judge stated that the deadline to add parties and amend pleadings would be held in abeyance, pending a December 6, 2022 telephone conference. [Minutes, filed 11/14/22 (dkt. no. 186), at PageID.1485.] During the December 6, 2022 telephone conference, the magistrate judge directed the parties to meet and confer to suggest a proposed briefing schedule regarding the competency issue, and the magistrate judge noted the parties' agreement to hold discovery issues in abeyance until the competency issue was resolved. See Minutes, filed 12/6/22 (dkt. no. 193). However, the Minutes of the December 6, 2022 telephone conference do not mention the deadline to add parties and amend pleadings. On December 7, 2022, Plaintiff's counsel submitted the parties' joint proposed briefing schedule for the guardianship and competency issues. [Letter, filed 12/7/22 (dkt. no. 196).] It stated that "all counsel join in a request that the case calendar be suspended, and all dates reset after the guardianship/competency issues are resolved." [Id.] However, the magistrate judge's EO setting the briefing schedule

did not address the parties' request to suspend all deadlines.
[EO, filed 12/8/22 (dkt. no. 197).]

On June 7, 2023, the magistrate judge issued an order requiring Spriestersbach to undergo a psychiatric evaluation and denying the motion to substitute a guardian as the plaintiff in this case. [Order Granting Defendants' Motions for a Court-Ordered Psychiatric Evaluation of Plaintiff Joshua Spriestersbach, and Order Denying Plaintiff's Motion to Substitute Guardian Robert A. Griffith as Plaintiff, filed 6/7/23 (dkt. no. 236) (redacted version) ("6/7/23 Order").] The 6/7/23 Order triggered the fourteen-day period for Spriestersbach to file his amended complaint, as set forth in the 10/13/22 Stipulated Order, but the magistrate judge held the deadline in abeyance, pending the completion of the competency evaluation. See Minutes - EP Telephone Conference, filed 6/20/23 (dkt. no. 241), at PageID.2495. The psychiatric evaluation of Spriestersbach was filed, under seal, on September 27, 2023. [Dkt. no. 243.] The magistrate judge held a telephonic conference on the same date, see Minutes - EP: Telephone Conference and Rule 16 Scheduling Conference, filed 9/27/23 (dkt. no. 244), and the 9/28 EO followed. Also on September 28, 2023, the magistrate judge issued an Amended Rule 16 Scheduling Order. [Dkt. no. 245.]

Spriestersbach filed his First Amended Complaint on October 18, 2023. [Dkt. no. 250.] He states it responds to the 8/18/22 Order, which permitted him to amend his claims against the City, and he notes that he is pursuing his objections to the magistrate judge's ruling that the deadline to make other amendments to the original Complaint expired. [Id. at pgs. 1-2 n.1.]

In the instant Objections, Spriestersbach argues his counsel could not amend his claims against the non-City defendants while the issue of his competency was pending. [Objections at 3.] He asserts "[a]ll of the parties to this action acted as though everything in this case was stayed pending the resolution of the competency issue in the period from October 2022 to September 27, 2023," and that "all of the actions by the parties and the Court indicated that all deadlines were held in abeyance pending the resolution of Plaintiff's competence." [Id.] Spriestersbach emphasizes that leave to amend should be granted freely and that a scheduling order can be amended if there is good cause. [Id. at 3-4.]

DISCUSSION

The 9/28/23 EO is a nondispositive order. This district court has stated:

Rule 72(a) of the Federal Rules of Civil Procedure allows a party to object to a nondispositive magistrate judge order "within 14

days after being served with a copy" of it. Fed. R. Civ. P. 72(a). It further provides, "The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." Id.

Under 28 U.S.C. § 636(b)(1)(A), a district judge may "reconsider" a magistrate judge's nondispositive pretrial order if it is "clearly erroneous or contrary to law." See also Bhan v. NME Hosp., Inc., 929 F.2d 1404, 1414-15 (9th Cir. 1991) (stating that § 636(b)(1) "provides that the magistrate's decision on a nondispositive issue will be reviewed by the district judge under the clearly erroneous standard"). The Ninth Circuit has explained, "Pretrial orders of a magistrate under 636(b)(1)(A) are reviewable under the 'clearly erroneous and contrary to law' standard; they are not subject to de novo determination. The reviewing court may not simply substitute its judgment for that of the deciding court." Grimes v. City & Cty. of San Francisco, 951 F.2d 236, 241 (9th Cir. 1991) (quotation marks and citations omitted).

The threshold of the "clearly erroneous" test is high. "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948); accord Easley v. Cromartie, 532 U.S. 234, 242 (2001) (stating that, in reviewing for clear error, "a reviewing court must ask whether, on the entire evidence, it is left with the definite and firm conviction that a mistake has been committed" (quotation marks and citation omitted)); United States v. Hylton, 30 F.4th 842, 846 (9th Cir. 2022) (reviewing a district court's findings of facts with respect to a denial of a motion to suppress and stating, "Review under the clearly erroneous standard is significantly deferential, requiring for reversal a definite and firm conviction that a mistake has been committed." (quotation marks and citation omitted)); Balen v.

Holland Am. Line Inc., 583 F.3d 647, 655 (9th Cir. 2009) ("Review under the clearly erroneous standard is significantly deferential, requiring a definite and firm conviction that a mistake has been committed." (quotation marks and citation omitted)).

"A decision is 'contrary to law' if it applies an incorrect legal standard or fails to consider an element of the applicable standard.'" Green v. Kanazawa, 2018 WL 5621953, at *3 (D. Haw. Oct. 30, 2018) (quoting Na Pali Haweo Cmty. Ass'n v. Grande, 252 F.R.D. 672, 674 (D. Haw. 2008)).

Sec. & Exch. Comm'n v. Semisub, Inc., CIVIL NO. 22-00349

SOM/KJM, 2022 WL 5182650, at *2 (D. Hawai'i Oct. 5, 2022).

The magistrate judge's finding that the deadline to add parties and amend pleadings expired, except for the deadline to amend the claims against the City, was not clearly erroneous. The November 29, 2022 deadline to add parties and amend pleadings was clearly stated in the 6/23/22 Scheduling Order. See 6/23/22 Scheduling Order at ¶ 2. That deadline was suspended pending the December 6, 2022 telephone conference, see Minutes, filed 11/14/22 (dkt. no. 186), at PageID.1485, but the deadline was not expressly vacated, nor was it held in abeyance pending the resolution of the guardianship and competency issues. On December 8, 2022, when the magistrate judge set the guardianship/competency briefing schedule, the magistrate judge did not address the parties' request to suspend all deadlines, effectively denying that request. Although the magistrate judge

did not set a new deadline when the request was denied, because the deadline to add parties and amend pleadings was only held in abeyance pending the December 6, 2022 status conference, the deadline to add parties and amend pleadings expired after the December 8, 2022 denial of the request to suspend all deadlines.

The arguments that Spriestersbach presents in the Objections are arguments that should be presented in a motion seeking to amend the current scheduling order, pursuant to Fed. R. Civ. P. 16(b)(4), and seeking leave to file a second amended complaint, pursuant to Fed. R. Civ. P. 15(a)(2). Spriestersbach's arguments do not establish that the 9/28/23 EO was either clearly erroneous or contrary to law. He has therefore failed to present any grounds that warrant reversal of the 9/28/23 EO.

CONCLUSION

For the foregoing reasons, Spriestersbach's Objections to Magistrate Order Dated 09.28.23 Which Denies Plaintiff Opportunity to Amend Complaint, filed October 11, 2023, is HEREBY DENIED, and the magistrate judge's September 28, 2023 entering order is AFFIRMED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, November 28, 2023.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

JOSHUA SPRIESTERSBACH VS. STATE OF HAWAII, ET AL; CV 21-00456
LEK-RT; ORDER DENYING PLAINTIFF'S OBJECTIONS TO MAGISTRATE ORDER
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